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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,270	02/12/2001	Will Craig Meyer	1116-101.US	9947

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EXAMINER

HOEY, BETSEY MORRISON

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 04/18/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/782,270

Applicant(s)

MEYER, WILL CRAIG

Examiner

HOEY, BETSEY

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 15-17 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 and 14 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 12 is/are rejected.
- 7) ☒ Claim(s) 5-11 is/are objected to.
- 8) ☒ Claim(s) 1-17 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other

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1. It is noted that claims 15-17 have been "withdrawn" by Applicant. However, if Applicant wishes to cancel these claims, then an amendment stating that these claims are **canceled** is required.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

3. Claims 1-4 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Martin et al., U.S. Patent No. 6,372,148. Martin et al. teach an apparatus for purifying water in a hot tub or spa. Referring to Figure 1 of Martin et al., the apparatus comprises the spa 50, where water is circulated; a line 56 for extracting water from the spa, which includes pump 58; a filter 60; an ozone generator 12; a venturi assembly which receives water from line 56 and ozone from the ozone generator 12 and contacts the water and ozone; a series of pipes downstream of the venturi that together form three 90° bends which inherently causes shear and mixes water and ozone in a turbulent manner; and a return line following the third 90° bend for transporting the water and ozone mixture back to the spa.

4. Claims 5-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claims 13 and 14 are allowed.
6. The following is a statement of reasons for the indication of allowable subject matter:

Claims 5-11 would be allowed, and claims 13 and 14 are allowed, for the reasons set forth in the previous Office Action.

7. Applicant argues that claims 1-4 and 12 differ from Martin et al. because Martin et al. do not create turbulence to intimately mix water and ozone, nor do Martin et al. have any reason for creating this mixture. However, the **three** 90 degree bends in the piping of the apparatus of Martin et al. between the venturi injector and the spa inherently cause turbulence, and are patentably indistinguishable from the contacting passage recited in the instant claims.

Applicant is reminded that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Intended use has been continuously held not to be germane to determining the patentability of the apparatus, In re Finsterwalder, 168 USPQ 530. Purpose to which apparatus is to be put and expression relating apparatus to contents thereof during intended operation are not significant in determining patentability of an apparatus claim. Ex parte Thibault, 164 USPQ 666. A recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed

apparatus from a prior art apparatus satisfying the structural limitation of that claimed, Ex parte Masham, 2 USPQ 2d 1647.

In summary, it does not matter that Martin et al. do not intend to use the bends in the piping of their apparatus for the purpose of causing turbulence and intimate mixing. Ninety degree bends in piping inherently cause turbulence, as is recognized by one of ordinary skill in the art and by the Applicant in the instant specification, and therefore the apparatus of Martin et al. anticipates the structural limitations of claims 1-4 and 12 of the instant application.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Betsey Hoey whose telephone number is (703) 305-3934. The examiner can normally be reached on Monday through Thursday from 8:30 AM to 6:00 PM, and on alternate Fridays from 8:30 AM to 5:00 PM.

The fax phone number for official after final faxes for this Group is 703-872-9311 for all other official faxes the number is 703-872-9310, and for unofficial faxes the number is (703) 305-7115. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Betsey M. Hoey
BETSEY MORRISON
PRIMARY EXAMINER
April 17, 2003